

1 KEVIN ALEXANDER (SBN 175204)
2 RICHARD SPIRRA (SBN 106361)
3 CRAIG J. MARIAM (SBN 225280)
4 GORDON & REES LLP
5 101 W. Broadway, Suite 2000
6 San Diego, CA 92101
7 Telephone: (619) 696-6700
8 Facsimile: (619) 696-7124

9 MANUEL SALDANA (SBN 137060)
10 GORDON & REES LLP
11 633 W. 5th Street, Ste. 4900
12 Los Angeles, CA 90071
13 Telephone: (213) 576-5000
14 Facsimile: (213) 680-4470

15 Attorneys for Defendant
16 **BIC USA, INC.**

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 DONNA R. NELSON, an individual and
20 on behalf of the general public,

21 Plaintiff,

22 vs.

23 BIC USA, INC., a Delaware corporation,
24 and DOES 1 through 100, inclusive,

25 Defendants.

CASE NO.: 3:07-cv-2367

Honorable Larry A. Burns

**DECLARATION OF STEVE
MILKEY IN SUPPORT OF
DEFENDANT BIC USA, INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION TO REMAND FOR
LACK OF SUBJECT MATTER
JURISDICTION**

Date: March 3, 2008

Time: 10:30 a.m.

Courtroom: 9 / 2nd Floor

[ORAL ARGUMENT REQUESTED]

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DECLARATION OF STEVE MILKEY

I, Steve Milkey, declare:

1. I am the Senior Director of Sales for Defendant, BIC USA, INC. ("BIC"). BIC is a corporation formed under the laws of the State of Delaware. BIC's principal place of business is located in Milford, Connecticut. I am over the age of eighteen years and a citizen and resident of the United States of America. The matters stated in this declaration are of my own personal knowledge gained as an employee of BIC and, if called upon as a witness, I could and would competently testify thereto.

2. Each memorandum, report, record, or data compilation relied on or referenced in this declaration, including, but not limited to, sales, revenue, and profit records, has been kept in the course of a regularly conducted business activity, and it has been the regular practice of BIC to create and maintain these records as part of its regularly conducted business activity.

3. I have reviewed the Complaint filed by Plaintiff, Donna R. Nelson, captioned *Donna R. Nelson vs. BIC USA, Inc. and Does 1 through 100, inclusive*, filed in the Superior Court for the State of California in and for the County of San Diego, Case No. 37-2007-00081566-CU-BT-CTL.

4. As the Senior Director of Sales, I have access to BIC's sales data for the periods November 14, 2003 through the present. I have reviewed this data in preparation for verifying this declaration. During the four-year period preceding the filing of this action, from November 14, 2003 through November 13, 2007, BIC sold more than 50 million J-26 "Made in the USA" (i.e., "Maxi") lighters in the State of California. Based on my extensive sales experience selling BIC® lighters and based on sales, marketing, shipping and other related data, BIC's J-26 "Made in the USA" lighters were ultimately sold to far more than 500,000 individuals who, based on my review of the Complaint, would fall within the purported class. Further, during this period from November 14, 2003 through

1 November 13, 2007, BIC received in excess of \$5 million dollars in revenues from
2 the sale of BIC J-26 "Made in the USA" (Maxi) lighters in the State of California.
3 BIC's profits from the sale of the "Made in the USA" Maxi lighters are also in
4 excess of \$5 million dollars. The sales, revenue, and profit figures contained in
5 this paragraph relate to and represent only those Maxi lighters that contain the
6 notation, "Made in USA"; they do not relate to or represent sales, revenue, or profit
7 figures as to those Maxi lighters that contain the notation, "Made in France,"
8 "Made in Spain," "Made in Brazil," or any other country of origin other than the
9 BIC Maxi lighters made in the USA. Sales of the Maxi lighters are continuing
10 daily. Despite the allegations contained in the Complaint, BIC denies that Plaintiff
11 or any alleged putative class member is entitled to recover any amount of BIC's
12 revenues or profits arising out of the sale of these lighters.

13 5. The cost of compliance to BIC with respect to Plaintiff's requested
14 injunction would be extraordinary and practically speaking, impossible. Both
15 BIC's internal requirements and external requirements, including applicable
16 Customs Regulations, necessitate BIC's identifying the BIC® J-26 lighter's
17 country of origin as "Made in the USA." BIC does not sell direct to the consumer,
18 but rather to retailers and distributors. BIC cannot successfully prevent retailers
19 and distributors outside of California from selling to consumers inside California.
20 To the extent BIC might be able to control its design, manufacturing, marketing
21 and sales processes to prevent it from selling its "Made in USA" lighters directly to
22 retailers and distributors in California, it has little ability to control the sales by the
23 retailers or distributors who are free to sell product in California. Further, should
24 such changes in BIC's processes be feasible, and, practically, I do not know how
25 they would be, such changes would be excessively expensive and burdensome to
26 implement, and ineffective for the reasons stated herein.

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1 I declare under the laws of the State of California and the United States of
2 America that the foregoing is true and correct.

3 Executed this 13 day of February 2008, in Milford, Connecticut.

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7 Steve Milkey
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